IN THE SUPREME COURT OF THE STATE OF NEVADA

TERRANCE LAMONTE COX,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47092

FILED

JUN 29 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of possession of a controlled substance with the intent to sell. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge. The district court sentenced appellant Terrance Lamonte Cox to serve a prison term of 18-48 months to run concurrently with the sentence imposed in an unrelated case.

Cox's sole contention is that the district court abused its discretion by imposing a sentence which constitutes cruel and unusual punishment in violation of the Nevada Constitution.[1] The extent of Cox's argument is that he was "simply" possessing marijuana with the intent to sell – "not a more serious drug." We disagree with Cox's contention.

The Eighth Amendment of the United States Constitution does not require strict proportionality between crime and sentence, but forbids only an extreme sentence that is grossly disproportionate to the

[1]See Nev. Const. art. 1, § 6.

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crime.[2] This court has consistently afforded the district court wide discretion in its sentencing decision.[3] The district court's discretion, however, is not limitless.[4] Nevertheless, we will refrain from interfering with the sentence imposed "[s]o long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence."[5] Despite its severity, a sentence within the statutory limits is not cruel and unusual punishment unless the statute itself is unconstitutional, and the sentence is so unreasonably disproportionate to the crime as to shock the conscience.[6]

In the instant case, Cox does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant sentencing statutes are unconstitutional. In fact, the sentence imposed by the district court was within the parameters provided by the relevant statutes.[7] We also note that the granting of probation is discretionary.[8]

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[2]Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion).

[3]Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

[4]Parrish v. State, 116 Nev. 982, 989, 12 P.3d 953, 957 (2000).

[5]Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

[6]Allred v. State, 120 Nev. 410, 420, 92 P.3d 1246, 1253 (2004).

[7]See NRS 453.337(2)(a); NRS 193.130(2)(d) (category D felony punishable by a prison term of 1-4 years).

[8]See NRS 176A.100(1)(c).

Therefore, we conclude that the district court did not abuse its discretion at sentencing.

Having considered Cox's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

cc: Hon. Stewart L. Bell, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk